NIGERIA

TRADE SUMMARY

In 1999, the U.S. trade deficit with Nigeria was more than $3.7 billion, a slight increase over the trade deficit of $3.4 billion of the previous year. U.S. exports to Nigeria were $628 million, a decrease of $191 million from the previous year, and imports were almost $4.4 billion, an increase of $166 million over the previous year. Despite restricted market access for many agricultural commodities, the United States is a leading exporter of agricultural products to Nigeria and the country's top wheat supplier. In 1999, Nigeria was the United States' 58th largest export market. In 1998, the stock of U.S. foreign direct investment, largely concentrated in the petroleum sector, was estimated to be $1.9 billion, an increase of almost 12 percent from 1997.

In May 1999, Nigeria graduated from military rule to civilian democracy. The new government has affirmed its support, in principle, for reform, including trade liberalization and privatization. Nigeria is regularly ranked as one of the most corrupt countries in the world by international watchdog groups.

IMPORT POLICIES

During the past decade, the Government of Nigeria has moved to gradually eliminate import bans and remove import restrictions. In 1992, the Government of Nigeria lifted its import ban on wheat which led to Nigeria becoming the United States' largest wheat market in Africa.

In 1995, Nigeria announced a new tariff structure that aimed to narrow the range of customs duties and increase rate coverage in line with WTO provisions. The Government of Nigeria also began to consider lifting import bans that had been implemented to protect Nigeria's agricultural sector and conserve foreign exchange. Widespread smuggling had compromised the bans and played havoc with market prices. In 1996, the Nigerian Inter-Ministerial Committee on Trade Restrictions and the Technical Committee on Tariff Review abolished all export licensing requirements and began implementation of a three-year phased removal of import bans. In January 1998, the Government of Nigeria lifted import bans on poultry, eggs, barley, barley malt, beer, and mineral waters. However, it placed restrictive *ad valorem* tariffs on a number of these previously banned commodities, including poultry and eggs (150 percent), beer and mineral waters (100 percent), and barley and barley malt (20 percent).

In the 1999 budget, the Government of Nigeria announced that the 1998 higher tariffs would be reduced, but at the same time restored excise duties that had been eliminated in 1998 for the following goods: cosmetics and bleaching creams (20 percent) and wine, beer, and fermented beverages (40 percent). Other commodity *ad valorem* duty rates were adjusted as follows: rice (50 percent); day old chicks and parent stock (5 percent); sparkling wines, wine coolers and champagne (100 percent); fruits and fruit juices (reduced from 75 percent to 55 percent); jute (10 percent); cotton (60 percent); fertilizers (5 percent); textile fabrics (65 percent); and garments (75 percent). Duty rates for live, chilled or frozen poultry and eggs were reduced from 150 percent to 55 percent to limit the attractiveness of smuggling these items and the subsequent loss of duty revenue. In addition, the Government of Nigeria abolished the 25 percent import duty rebate that was granted to importers beginning in late 1997. Though poultry and eggs, beer and stout, barley and malt, and mineral and similar waters had been removed from the prohibited import list in 1998, for some reason they never qualified for this rebate. The FY1999 budget also announced that the import ban on the following items would be removed and the following duties applied: plastic materials (excluding baby feeding bottles, 30 percent); vegetable oils (40 percent); cooking oils (35 percent); margarine (40 percent); and industrial oils (20 percent). Nigeria continues to maintain an import ban on corn and sorghum.

In the FY2000 budget, the Government of Nigeria introduced new elements to its deregulation program. While continuing the reduction of tariffs on certain raw materials and capital goods and the elimination of some import bans, mostly on manufacturing inputs, the Government of Nigeria raised or revived excise duties on a number of consumer goods to protect local producers. In addition, the Government of Nigeria proposed restrictions on the importation of finished goods. Finished goods likely to be affected include textiles, edible oils, cement, refrigerators, certain vehicle makes, air-conditioners, soap, detergents and other consumer products.

Other import restrictions apply to aircraft and oceangoing vessels. A government authorized inspection agent must inspect all imported aircraft and oceangoing vessels. In addition, performance bonds and offshore guarantees must be arranged before a down payment is made and the Ministry of Finance authorizes subsequent payment.

Foreign Exchange

In 1999, the Autonomous Foreign Exchange Market (AFEM), which was reestablished by the Foreign Exchange Decree of 1995, was fully deregulated. Dual exchange rates have been eliminated and only the AFEM (renamed the Interbank Foreign Exchange Market, or IFEM) remains. The Central Bank continues to intervene in the IFEM, which comprises banks that bid daily for customers. Companies can now hold domiciliary accounts in private banks and have unfettered use of the funds. Foreign investors may bring capital into the country without Ministry of Finance approval and may freely service foreign loans and remit dividends. Exchange houses are functioning well and the transaction ceiling has been raised to $10,000.

In January 2000, the Central Bank of Nigeria declared that oil companies were free to sell foreign exchange to banks, individuals, and organizations, thus diversifying local sources of foreign exchange.

Pre-Shipment Inspection

Following a reported shortfall in customs revenues, the Government of Nigeria implemented extensive port and customs reform in April 1996 to reduce corruption in customs, raise collections, and relieve port congestion. The reform focused on the assessment of import duties and pre-shipment inspection (PSI). The change required importers to obtain an import duty report for all shipments. Although customs revenue increased by two-thirds under the program, the Government of Nigeria fell far short of its goal of clearing goods through the port within 48 hours. To speed clearance, the Government of Nigeria decided to eliminate PSI requirements for all African countries and 15 major trading countries in January 1998. In 1999, the Government of Nigeria extended similar treatment to the United States and other countries not exempted in 1998. In the 1999 budget, the Government of Nigeria outlined a plan to abolish PSI altogether and to replace it with destination inspection by April 1999. The implementation of this plan, however, suffered serious setbacks due to logistical problems, poorly trained staff, and inadequate resources. Within six months, destination inspection was withdrawn and PSI reinstated. Pre-shipment inspection time and cost requirements continue to hamper U.S. exporters.

The WTO Secretariat considers the often-changing PSI scheme in Nigeria “expensive, discriminatory, and inefficient.” The multiplicity of import documents and customs regulations and agencies in Nigeria complicates the import process. Companies have reported false invoicing and counterfeit documents, extortion, embezzlement, and poor security practices. U.S. companies report that the illegal discharging of levies may increase the cost of imports into the country by as much as 45 percent. As a result, much Nigerian trade is being diverted through Togo and Benin and a significant share of Nigeria's regional trade takes place on an informal basis.

Nigeria has not implemented the Agreement on Customs Valuation and still uses the Brussels Definition of Value (BDV) to assess duty. However, Nigerian Customs plans to implement the change to transaction values soon, and the Ministry of Commerce is receiving technical assistance from the WTO for this purpose.

Business Fraud

The broad scope of business fraud has severely tarnished the international image of Nigeria and constitutes a serious disincentive to investors and exporters. U.S. businesses and citizens lose an estimated $1 billion per year to fraud, scams, and corruption of various kinds linked to Nigerians. Nigeria has partially implemented its 1995 money laundering decree, which introduced bank reporting procedures designed to inhibit this practice. The country has also implemented a decree targeting advance-fee fraud (called 419 fraud, after the relevant section of the Nigerian criminal code). As of 1999, however, there had been only limited success in reducing financial fraud despite improved law enforcement actions against fraud perpetrators.

GOVERNMENT PROCUREMENT

Anticorruption is a central and energetic plank in the platform of the Obasanjo Administration. The Anticorruption Bill, which passed the National Assembly in January 2000, includes a series of measures that range from procedures for tendering for contracts to punishments for corrupt officials. To correct for past procurement irregularities, the new government undertook an extensive review of contracts made under the previous regime and has sought to make the oil contract process less opaque. The Obasanjo Administration has also made some progress on its pledge to institute open and competitive contracting. Tenders are currently published in newspapers for prospective contractors. Foreign companies incorporated in Nigeria receive national treatment. Nonetheless, corruption continues to be a major concern. Approximately five percent of all government procurement contracts are awarded to U.S. companies. Nigeria is not a signatory of the WTO Agreement on Government Procurement.

EXPORT SUBSIDIES

In 1976, the government established the Nigerian Export Promotion Council (NEPC) to promote non-oil exports from Nigeria. The Council administers various incentive programs, including a duty drawback program, the export development fund, tax relief and capital asset depreciation allowances, and a foreign currency retention program. The government reports that the duty-draw back and export expansion grant schemes have been the most widely utilized incentives, though each program distributes less than $1 million in subsidies annually.

The duty drawback or manufacturing in-bond program was designed to allow the duty-free importation of raw materials to produce goods for export, contingent upon the issuance of a bank guarantee. The performance bond is discharged upon evidence of exportation and repatriation of foreign exchange.

The export expansion grant program consists of a fund that provides grants to exporters of manufactured and semi-manufactured products. Grants are awarded on the basis of the value of goods exported. The only requirement for participation is that the export proceeds be repatriated to Nigeria. While the grant amounts are small, ranging from two percent to five percent of total export value, they may constitute subsidies as defined by the WTO and, as such, raise questions about compliance with WTO obligations.

Though meant to promote industry and exports, these schemes have been burdened by inefficient administration, confusion, and corruption, causing great difficulty and, in some cases, losses to the manufacturers and exporters who opted to use them. In the 1999 budget, the Government of Nigeria announced that the incentive schemes would be replaced by a non-cash incentive scheme called "Negotiable Duty Credit Certificates" (NDC's), under which an exporter's claims are credited against future imports. This measure is in conformity with the WTO and obviates the need for the Government of Nigeria to make an annual budgetary allocation to the scheme.

The Government of Nigeria discontinued fertilizer subsidies for farmers in 1997, reintroduced them in 1999, and then recently announced that they would be abolished. Against this backdrop of stop and go measures and policy reversals, widespread fertilizer shortages have persisted.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Nigeria is considered to be Africa's largest market for pirated products. Losses from inadequate protection of intellectual property rights (IPR), though difficult to estimate, are substantial. Most recordings sold in Nigeria are pirated, and the video industry is based on the sale and rental of pirated tapes. Satellite signal piracy is also common. Violation of patents on pharmaceuticals and auto parts is a significant problem. Few companies have sought trademark or patent protection in Nigeria because it is generally perceived to be ineffective.

Nigeria is a signatory to the Universal Copyright Convention and the Berne Convention. In 1993, Nigeria became a member of the World Intellectual Property Organization (WIPO), thereby becoming party to most of the major international agreements on intellectual property rights. Nigeria's active participation in these international conventions has yielded some positive results. The Nigerian Copyright Council has intensified efforts to combat piracy by organizing workshops for law enforcement agents on copyright issues. And, law enforcement agents occasionally carry out raids on suspected sites for production and sale of pirated tapes, videos, computer software, and books. Nevertheless, piracy is widespread and prosecution under the copyright law has been slow. While cases involving infringement of non-Nigerian copyrights have been successfully prosecuted in Nigeria, enforcement of existing laws remains weak, particularly in the areas of patents and trademarks.

Statutes which govern IPR in Nigeria include the Copyright Act of 1988 (amended in 1992), the Patents and Design Decree of 1970, the Trademarks Act of 1965, the National Film and Video Censors Board Act of 1993 (which reinforces the measures of the Copyright Act), and the Nigerian Film Policy Law of 1993 (which encourages the development of the Nigerian film industry). The Copyright Decree of 1988, based on WIPO standards and U.S. copyright law, criminalizes counterfeiting, exporting, importing, reproducing, exhibiting, performing, or selling any work without the permission of the copyright owner. But the expense and time necessary to pursue a copyright infringement case discourages prosecution. The Patents and Design Decree of 1970 governs the registration of patents, and the Standards Organization of Nigeria is responsible for issuing patents, trademarks, and copyrights. Once conferred, a patent conveys an exclusive right to make, import, sell, or use the products or process. The Trademarks Act of 1965 governs the registration of trademarks. A trademark conveys the exclusive right to use the registered mark for a particular good or class of goods.

IPR problems in the Nigerian film industry rose dramatically with the nationalization of the film industry (including distribution) in 1981.

Although this policy has been officially abandoned, many problems remain. Member companies of the Motion Picture Association (MPA) were never paid the contractual compensation promised by the Government of Nigeria and have been unable to repatriate their assets from the country. As a result, MPA members no longer trade in Nigeria.

There has been some movement on the part of intellectual property rights holders to combat rights infringement in Nigeria. Nigerian companies, including film makers, formed the Proteus Entertainment Agency to protect copyrights in music, video, and other industries. Attorneys active in IPR issues have formed the Industrial Property Law Interest Group (IPLIG) to educate and lobby on behalf of industrial IPR issues. They have sponsored several copyright conferences throughout the country and credit themselves for getting an IPR course included in the curriculum at the Lagos Law School.

SERVICES BARRIERS

Nigeria is substantially open to foreign investment. There are very few market restrictions in Nigeria with respect to trade and investment in services. What exists is a series of regulations that guide access to each sector.

Financial Services

The country's financial sector has been substantially liberalized during the past three years as two new foreign banks have initiated operations. Banks must comply with statutory regulations. The Central Bank of Nigeria is responsible for bank supervision. Recently, the Central Bank stipulated that new banks must maintain a minimum paid-up capital of N1 billion, while existing banks may continue meeting the previous requirement of N500 million. Merchant banks and discount houses are authorized to carry out securities underwriting and related activities. Stock brokerage businesses must register with the Securities and Exchange Commission (SEC), which regulates the Nigerian Stock Exchange. An insurance operator must register with the Nigerian Insurance Commission (NAICOM), which stipulates the minimum paid-up capital depending upon category of business, and become a member of the Nigerian Insurance Association. General insurance companies, like the National Insurance Trust Fund, are allowed to also manage pension funds. Until recently, reinsurance was only available through the government-owned Nigerian Reinsurance Corporation.

Telecommunications and Broadcasting

In 1998, the Nigerian government announced a scheme to privatize NITEL, wherein 40 percent of NITEL's equity would be sold to core foreign investors. Along with privatization, the government promised the entry of an independent carrier to compete with NITEL. In a move to break NITEL's monopoly, the Nigerian government announced in its October 1999 Telecommunications policy that licenses would be granted to four communications firms to operate a global system for mobile communications (GSM). Seven out of seventeen firms prequalified before the licensing process was suddenly suspended in March 2000, raising serious concerns about transparency and the arbitrariness of policy directives. There are more than 100 private telecommunications companies, mostly providing value-added services, wireless phones, and cellular and rural telephony.

Nigeria's radio and television market, once the province of government, was deregulated in 1995. As of the end of 1999, 10 private stations and more than 20 satellite redistribution companies have entered the market. Similarly, radio stations have expanded to include four private stations in the Lagos area.

Health

The Federal Ministry of Health and the Nigerian Medical Council stipulate conditions for establishing a health service business. In so doing, they are guided by advice from the Nigerian Medical Association (NMA). An essential requirement for a foreign medical doctor is membership in the NMA. At present, social services outside the public sector are almost nonexistent.

Education

A standard requirement is that the proprietor of a school or institute be an "education officer." Ministry of Education approval is required before a school or institute may commence operations.

Tourism

Membership in the Nigeria Hotel Owners Association is a requirement for establishing a lodging and restaurant business in Nigeria. Operators of travel businesses must be members of the National Association of Nigerian Transport Association. Another prerequisite is that they be members of the International Air Transport Association (IATA).

Computer Services

Computer services are not yet regulated. Nigeria boasts a large computer and related services market, although the exact size is unknown. A Nigerian Communications Commission survey on Internet service estimated that there were more than two million installed personal computers in the country.

INVESTMENT BARRIERS

Investors in Nigeria must compensate for the country's deteriorating infrastructure, persistent gasoline and energy shortages, a banking system which lacks credibility, confusing and inconsistent regulations, a slow legal process and weak enforcement of commercial laws, and endemic corruption. U.S. oil companies operating in the Niger Delta region have experienced sabotage, demonstrations, and frequent kidnaping of employees.

In 1995, Nigeria promulgated the Nigerian Investment Promotion Commission Decree to replace the Enterprises Promotion Act. This decree liberalized the foreign investment regime, allowing 100 percent foreign ownership of firms outside the petroleum sector. Investment in the petroleum sector is still limited to existing joint venture agreements or production-sharing contracts with the Government of Nigeria, although there has been discussion about the Government of Nigeria selling some small parts of its equity in joint ventures. There are also restrictions on foreign businesses in the telecommunications and power sectors, where the existing carriers are the state owned Nigerian Telecommunications Company (NITEL) and the National Electric Power Authority (NEPA). These have been slated for privatization (see subsection on parastatals below). In addition, a foreign enterprise may not buy shares in firms on the "negative list," which includes manufacturers of firearms, ammunition, narcotics, and military and paramilitary apparel.

The Nigerian Investment Promotion Commission Decree also created the Nigerian Investment Promotion Commission (NEPC). NEPC is responsible for registering foreign owned companies under the Companies and Allied Matters Decree of 1990. Once registered, an investor is guaranteed unconditional transfer of funds through an authorized foreign exchange dealer in any convertible currency. This provision applies to dividends, net profits, payments for foreign loans obtained, and remittances attributable to the business. While the decree abolished the expatriate quota system (except in the oil sector), in practice businesses are advised to request an expatriate quota from the Internal Affairs Ministry before engaging in activities. Foreign businesses are encouraged to employ Nigerian nationals in areas where no special technical skills are required. There is no limitation on the size of the quota, and requests are treated on a case-by-case basis. The decree also prohibits any nationalization or expropriation of a foreign enterprise by the Government of Nigeria except for such cases determined to be in the national interest.

As described in the December 1986 circular "Industrial Policy of Nigeria," the Government of Nigeria maintains a system of incentives to foster the development of particular industries, encourage firms to locate in economically disadvantaged areas, promote research and development in Nigeria, and favor the use of domestic labor and raw materials. The Industrial Development (Income Tax Relief) Act of 1971 provides incentives to "pioneer" industries deemed beneficial to Nigeria's economic development. Companies given "pioneer" status may enjoy a non-renewable tax holiday of five years, or seven years if the "pioneer" industry is located in an economically disadvantaged area.

Nigeria notified the WTO on July 17, 1996 that it maintains certain measures that are inconsistent with the WTO Agreement on Trade-Related Investment Measures (TRIMS). These measures relate to incentives for the use of local raw materials under the "Industrial Policy of Nigeria." Proper notification allows developing-country WTO members to maintain such measures for a five-year transitional period upon accession to the WTO. Nigeria has not yet eliminated these measures.

The government created the Nigerian Export Processing Zone Authority (NEPZA) in 1992 as part of an effort to increase foreign investment. To date, the only export processing zone created under this scheme is located in the eastern port city of Calabar. After six years, the Government of Nigeria reports that sixteen firms have obtained provisional authority to operate there and $50 million has been invested. However, only six firms have begun test production runs and no exports have yet been generated.

OTHER BARRIERS

Parastatals

In July 1999, President Obasanjo outlined a three-phase plan for privatizing Nigeria's state enterprises that promised to be the most comprehensive in Africa. The plan has run into a number of difficulties, not the least of which is strong opposition from entrenched vested interests. After some delay, the Government of Nigeria has embarked on the first phase, which involves privatizing eleven firms, including cement, oil marketing, and banking firms that are quoted on the stock exchange. In the second phase, the government intends to privatize hotels and vehicle assembly plants. And in the third phase, the government intends to privatize the electric utility (NEPA), the national telecommunications company (NITEL), Nigeria Airways, four oil refineries, and the national fertilizer company, (NAFCON). The decision to deal with key parastatals in the third phase has dampened the enthusiasm of investors and observers for the program.

The Government of Nigeria has repealed or amended eleven decrees that had inhibited competition or conferred monopoly powers on public enterprises in the petroleum, telecommunications, power and mineral sectors. As a result, a number of private value-added telecommunications companies opened operations in 1998.

In the 1998 budget, the Government of Nigeria had outlined the following equity scheme to privatize NITEL and NEPA: 40 percent for core foreign investors, 20 percent for Nigerian citizens, and 40 percent to be retained by the Government of Nigeria. The promised privatization of NITEL and NEPA, however, did not occur and now prospects for their sale are unclear. In July 1999, the Government of Nigeria declared conditional support for the eventual privatization of these parastatals, after the evaluation and rehabilitation of their assets. For power generation, one State Government negotiated a contract with a U.S. company to invest in an independent power plant that would complement local NEPA operations. The validity of this contract has been challenged by the Federal Government of Nigeria. At this time, it is unclear as to what the outcome will be.